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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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			3639	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,204	<b>Applicant(s)</b> JANSSEN, CRAIG N.	
	<b>Examiner</b> Freda A. Nelson	<b>Art Unit</b> 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The amendment received on May 18, 2006 is acknowledged and entered. Claims 2, 10, 16, 19 and 25 have been amended. No claims have been added. Claims 1-31 are currently pending.

#### ***Response to Amendments and Arguments***

Applicant's arguments filed May 18, 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments that the term "complex" is not indefinite. The examiner withdraws the rejection under 35 USC § 112, 2<sup>nd</sup> paragraph regarding the term "complex".

In response to applicant's arguments that in regards to claim 1, the term "determining" and the term "potential revenue" provide sufficient antecedent basis for the term "the identified potential revenue". The examiner respectfully disagrees. However, the examiner would like to suggest using "said potential revenue" and "said cost" in order to provide proper antecedent basis for the terms "potential revenue" and "cost".

In response to applicant's arguments that in regards to claims 13-14, 22, 24, and 31, the term "the identified cost" has sufficient antecedent basis, the examiner respectfully disagrees because there was no antecedent basis in any of claims 1, 21, or 24, however, the examiner would like to suggest using "said cost" in order to provide proper antecedent basis for the term "cost".

In response to applicant's arguments that in regards to claim 24, the term "the identified potential revenue" has sufficient antecedent basis, the examiner respectfully disagrees because there was no antecedent basis, however, the examiner would like to suggest using "said potential revenue" in order to provide proper antecedent basis for the term "potential revenue".

In response to applicant's arguments that in regards to claims 1-2, 5, 13-15, 20-22, 24, and 30-31, the Adams reference does not disclose the concept of "identifying a plurality of facilities in a complex, each facility associated with a construction project", the examiner respectfully disagrees. Adams discloses a facility which is a stadium (see col. 2, lines 19-26) and by applicant's definition on page 15 (the REMARKS section), the term "facility" refers to all or a portion of a stadium. Therefore, Adams discloses a stadium (complex) with several portions (facilities) including an area to sell tickets and an area for vendors.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's arguments that Adams does not disclose "generating a schedule of construction projects, the examiner would like to direct the applicant's attention to the Adams reference where Adams discloses a "*system for financing a stadium facility to be constructed*" (see col. 1, lines 41-42) and Hertz-Szabadi where it

disclose that *"the project tasks 110 define activities and phases to be performed in the project 105. For example, for a construction project examples of project tasks 110 may include preparing blue prints, obtaining the proper permits, preparing the foundation, ordering the lumber, hiring sub-contractors, etc"* (see paragraph [0019]).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, motivation is found in the reference (see Hertzelszabadi paragraphs [0003],[0017],[0028]).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Adams, Hertzelszabadi and Christianitytoday.com are in the applicant's field of endeavor (construction costs) as well as, being reasonably pertinent to the particular problem with which the applicant is concerned.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 3, 10, 13-14, 19, 22, 24 and 30-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the identified potential revenue" and "the identified cost" in lines 6 and 7, respectively. There is insufficient antecedent basis for this limitation in the claim. The examiner would like to suggest using "said potential revenue" and "said cost" in order to provide proper antecedent basis for the terms "potential revenue" and "cost".

Claim 3 recites the limitation "the cost" in lines 1 and 5, respectively. There is insufficient antecedent basis for this limitation in the claim. The examiner would like to

suggest using "said potential revenue" and "said cost" in order to provide proper antecedent basis for the terms "potential revenue" and "cost".

Claim 10 recites the limitation "the changes" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claims 13 and 30, recite the limitation "the identified cost" in lines 2-3. There is insufficient antecedent basis for this limitation in the claims.

Claim 14 recites the limitation "the identified cost" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the at least one change" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 22 recites the limitation "the identified cost" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitation "the identified potential revenue" in line 12 and "the identified cost" in line 13. There is insufficient antecedent basis for these limitations in the claim.

Claim 31, recites the limitation "the identified cost" in lines 1-2. There is insufficient antecedent basis for this limitation in the claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 5, 13-15, 20-22, 24, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. (Patent Number 6,154,730) in view of Hertzelszabadi (US PG Pub. 2003/0233267).

As for claims 1, 13-15, 20-21, and 30-31, Adams et al. disclose a method, comprising:

- identifying a plurality of facilities in a complex, each facility associated with a construction project (col. 1, lines 41-44; col. 3, lines 38-57); and

- determining a potential revenue associated with at least one of the facilities; and determining a cost associated with at least one of the facilities (col. 1, lines 46-51).

Adams et al. do not disclose generating a schedule of the construction projects using the identified potential revenue and the identified cost.

Hertzelszabadi discloses that the project structure with phases (work breakdown structure elements) and the necessary activities (tasks) have to be defined and costs and potential revenues have to be calculated, timelines to be scheduled and probably personnel and other resources soft-booked, in order to be able to do reasonable and reliable quotations that can be fulfilled in case they are accepted by the customer (paragraph [0003]); and that the planning of structures, costs, revenues, resources, timeliness etc. can and will normally be refined and detailed during the life cycle of the project 105 (paragraph [0028]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to include the feature of Hertzelszabadi in order to give to be able to give reasonable and reliable quotations (see Hertzelszabadi paragraphs [0003],[0017],[0028]).

As for claim 2, Adams et al. disclose the method of claim 1, further comprising: predicting a number of people who will use at least one of the facilities (abstract; col. 51-56); and wherein determining the potential revenue associated with at least one of the facilities comprises determining the potential revenue associated with at least one of the facilities using the predicted number of people (abstract; col. 4, 51-56).

As for claim 5, Adams et al. disclose the method of claim 1, wherein identifying the plurality of facilities comprises receiving an identification the facilities from a user (abstract).

As for claim 22 and 24, Adams et al. disclose a system, comprising: memory operable to store information identifying a plurality of facilities in a complex, each facility associated with a construction project (col. 1, lines 41-44; col. 3, lines 38-57); and an analysis module operable to:

- determining a potential revenue associated with at least one of the facilities;



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determining a cost associated with at least one of the facilities (col. 3, lines 2-19).

Adams et al. is silent about a computer program embodied on a computer readable medium, however, this feature is deemed to be inherent in the Adams et al. invention in order to run the STAFI system.

Adams et al. do not further disclose generating a schedule of the construction projects using the identified potential revenue and the identified cost. Hertzelszabadi discloses that the project structure with phases (work breakdown structure elements) and the necessary activities (tasks) have to be defined and costs and potential revenues have to be calculated; timelines to be scheduled and probably personnel and other resources soft-booked, in order to be able to do reasonable and reliable quotations that can be fulfilled in case they are accepted by the customer (paragraph [0003]); and that the planning of structures, costs, revenues, resources, timeliness etc. can and will normally be refined and detailed during the life cycle of the project 105 (paragraph [0028]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to include the feature of Hertzelszabadi in order to give to be able to give reasonable and reliable quotations.

2. Claims 3-4, 8-9, 12, 16, 18, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. (Patent Number 6,154,730) in view of Hertzelszabadi (US PG Pub. 2003/0233267), in further view of Christianitytoday.com.

As for claims 3-4 and 26-27, Adams et al. do not disclose the method of claim 2, wherein determining the cost associated with at least one the facilities comprises:

identifying a size of at least one of the facilities based on the predicted number of people; determining the cost of at least one of the construction projects based on the identified size; and wherein identifying the size of the at least one facility comprises identifying a plurality of sizes for the at least one facility.

Christianitytoday.com discloses determining the cost associated with at least one the facilities comprises: identifying a size of at least one of the facilities based on the predicted number of people (page 2); determining the cost of at least one of the construction projects based on the identified size (page 5); and wherein identifying the size of the at least one facility comprises identifying a plurality of sizes for the at least one facility (page 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention to increase the user's options for funding construction.

As for claim 8, Adams et al. do not disclose the method of claim wherein 1, wherein determining the potential revenue associated with at least one of the facilities comprises identifying potential donations to be received during one or more fund-raising campaigns.

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Christianitytoday.com discloses forming a committee to decide how much money can be raised for the building project. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adam et al. to include the feature of Christianitytoday.com in order to increase the user's options for funding construction.

As for claim 9, Adams et al. disclose the method of claim 8, further comprising: identifying an amount borrowing needed pay for the construction projects (col. 2, lines 51-56); and identifying an amount of debt to be paid off each year (col. 3, lines 26-36).

As for claim 12, Adams et al. do not disclose the method of claim 1, wherein: the complex comprises a church; at least one of the facilities comprises an auditorium in the church; and determining the potential revenue comprises: estimating a number of people who will attend church services in the auditorium; and determining an amount of potential donations given to the church by the estimated number of people. Christianitytoday.com discloses a formula used to compute the size of a church complex; and spreading the calculations throughout the sanctuary, meeting rooms, nurseries, and educational space of your church complex (page 2); and form a committee to decide how much money can be raised for the building project (page 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams to include the feature of Christianitytoday.com in order to determine different options for funding construction project.

As for claims 16 and 25, Adams et al. disclose the system of claim 15, wherein: the one or more processors are further collectively operable to predict a number of people who may use at least one of the facilities (abstract; col. 51-56); the one or more processors are further collectively operable to determine the potential revenue associated with at least one of the facilities using the predicted number of people (col. 1, lines 46-51).

Adams et al. do not disclose the one or more processors are further collectively operable to determine the cost associated with at least one of the facilities by: identifying a size of at least one of the facilities based on the predicted number of people; determining the cost of at least one of the construction projects based on the identified size; and wherein identifying the size of the at least one facility comprises identifying a plurality of sizes for the at least one facility.

Christianitytoday.com discloses determining the cost associated with at least one the facilities comprises: identifying a size of at least one of the facilities based on the predicted number of people (page 2); determining the cost of at least one of the construction projects based on the identified size (page 5); and wherein identifying the size of the at least one facility comprises identifying a plurality of sizes for the at least one facility (page 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to

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include the feature of Christianitytoday.com in order to estimate to size of the facility needed to accommodate people.

As for claims 18 and 28, Adams et al. disclose identifying an amount borrowing needed pay for the construction projects (col. 2, lines 51-56); and identifying an amount of debt to be paid off each year (col. 3, lines 26).

Adams et al. do not disclose the system of claim 15 wherein, the one or more processors are collectively operable to determine the potential revenue associated with at least one of the facilities comprises identifying potential donations to be received during one or more fund-raising campaigns.

Christianitytoday.com discloses forming a committee to decide how much money can be raised for the building project. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to include the feature of Christianitytoday.com in order to increase the user's options for funding construction.

3. Claims 6-7, 10, 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. (Patent Number 6,154,730) in view of Hertzelszabadi (US PG Pub. 2003/0233267), in further view of Elliot (Patent Number 6,446,053).

As for claims 6-7 and 17, Adams et al. do not disclose the method of claim 1, wherein generating the schedule comprises, for each construction project, receiving from a user an identification of one of a plurality of phases during which the construction project would occur. Elliot discloses that the user computer organizes these time estimates according to the proper order in a construction project, for example, framing (Phase 5) must be completed before other phases can commence, however, some of the following phases can commence simultaneously, such as plumbing and framing (col. 10, lines 34-39; TABLE 1); and after Phase 1 is complete, the application guides the user through the next phase, Phase 2: Begin Site Work in 120 and 122 and in Step 1: Excavation, the application retrieves the square footage of the lot from memory, accesses the regional database, determines average labor rate for excavation subcontractors in that region, determines equipment costs for excavation in that region, and then calculates an estimate for the excavation step, wherein the equipment costs may include rental, fuel, and insurance costs (col. 8, lines 32-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to include the feature of Elliot in order to provide the user with a cost associated with a phase of the construction.

As for claims 10 and 23, Adams et al. do not disclose allowing a user to alter data used to generate the schedule; and showing the user real time how the changes in the altered data affect the schedule. Elliot discloses that if the user is not satisfied with the cost of the installation, the user can undo the operation and simulate another

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installation; and if the user is satisfied with the installation, the user computer moves on to the next step, updating and storing the revised graphical model and cost estimate model (col. 6, lines 38-48); and if any feature of the proposal is unsatisfactory, the user can revise the proposal at 126, wherein the user selects the phases and steps he wishes to edit at 128 and edits the proposal at those points (col. 10, lines 40-46). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to include the feature of Elliot in order to provide the user with the ability to make changes to the construction plans.

4. Claims 11, 19 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. (Patent Number 6,154,730) in view of Hertz-Szabadi (US PG Pub. 2003/0233267), in further view of Elliot (Patent Number 6,446,053), still in further view of Wakelam (Patent Number 6,859,768).

As for claims 11, 19, and 29, Adams et al. do not disclose allowing a user to place a constraint on data used to generate the schedule; and showing the user in real time how at least one change in the altered data and constraint affects the schedule. Wakelam et al. disclose that the Interview, massing element 201 gathers some basic information regarding the project and allows the user to change some high-level parameters of the building design and then controls the assembly hierarchy to produce a full-scale, three-dimensional model of the building, complete with drawings, specifications cost estimation, and schedule (col. 13, lines 34-50; FIG. 1-1a). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Adams et al. to include the feature of Wakelam et al. in order to provide the user to use what-if scenarios to get a variety of estimates.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

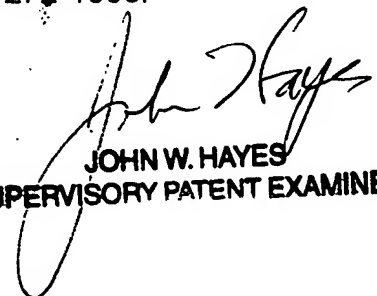
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 07/25/2006



**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**